

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7051 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5

NISAR AHMAD ISMAIL KURESHI

Versus

STATE OF GUJARAT

Appearance:

MR GIRISH PATEL for Petitioner
M/S PATEL ADVOCATES for Respondent No. 1
NOTICE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 06/12/1999

ORAL JUDGEMENT

When this matter is called out for final hearing,
no one appears for the respective parties.

2. The petitioner has approached this Court with a case that he was employed by the respondent No.3 Industry, and, on 15.1.1990, he was forced to resign from the service. Therefore, he had lodged a complaint in the

office of the Labour Commissioner on 17.1.1990. Pursuant to the said complaint, the Assistant Commissioner of Labour, Ahmedabad appears to have held hearings from 31.1.1990 to 4.6.1990 on several occasions. During the course of such proceedings, the employer Industry appears to have produced a photocopy of the alleged resignation dated 15.1.1990 of the petitioner. On the basis of such submission, the Assistant Commissioner of Labour has concluded that the petitioner had resigned from the service of the employer and hence it was not considered to be a fit case for reference of the dispute to the Labour Court. Against this order of refusing to refer the dispute to the Labour Court, the present petition is filed by the workman.

3. The respondents have neither filed any affidavit-in-reply nor made any oral submission. The impugned order refusing to refer the dispute clearly appears to have been made on consideration of the merits of the claim of the petitioner. By virtue of the impugned order, the case of the petitioner that he was made to resign by force is negatived and a copy of the resignation is accepted as an evidence of valid and legal termination of his service. Under the Scheme of the Industrial Disputes Act, 1947 and particularly under the provisions of Section 10 thereof, the Government is empowered to refer an existing or an apprehended industrial dispute, but the appropriate Government has no jurisdiction to decide an industrial dispute on merits. In this view of the settled legal position, the impugned order refusing to refer the industrial dispute to the Labour Court is clearly without jurisdiction and, therefore, the same requires to be quashed.

4. In view of the facts and the foregoing reasons, the impugned order at Annexure-A dated 27.7.1990 is hereby quashed and set aside and the respondents No.1 and 2 are directed to reconsider the demand and dispute of the petitioner for the purpose of making or refusing to make a reference in accordance with law without being influenced by the delay caused during pendency of this petition. The petition is allowed and the Rule is made absolute in terms as above.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)

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